

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICHARD LEES

Plaintiffs,

v.

**Case No. 2:06-CV-984
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Abel**

THERMO ELECTRON CORP., *et al.*

Defendants.

PRETRIAL ORDER

This matter came before the Court for a final pretrial conference on September 19, 2008 at 1 p.m. The Court instructed the parties regarding voir dire and exhibits. The Court has also considered the parties' pretrial motions, and for the reasons stated on the record at the conference, held as follows:

- 1) Defendant's Motion to Compel Discovery (Doc. #66) is granted in part and denied in part. Plaintiff will produce his 2006-2007 tax returns, Form W-2(s) and Form 1099(s), by Monday, September 22, 2008, to the Court for *in camera* review. A ruling on Plaintiff's Motion for Protective Order (Doc. #70) is held in abeyance, pending the Court's *in camera* review.
- 2) Plaintiff's Motion for a Protective Order and to Quash (Doc. #67) is denied.
- 3) Defendant's Motion to Bifurcate the trial (Doc. #65) is granted in part and denied in part. The liquidated and punitive damages portion of the trial, if necessary, will be presented to the jury following its determination on liability. The liability phase will include all of the parties' evidence regarding conduct, including arguments as to Defendant's degree of culpability. The liability phase will also include trial of all damages other than liquidated and punitive damages.


- 4) Plaintiff's Motion in Limine to Exclude Previously Undisclosed Witnesses (Doc. #53) is denied. Mr. Clear will be limited to fact, non-expert testimony regarding Thermo's current 401(k) plan and prior pension plan, including the mechanics of the frozen pension plan and lump-sum payments. Plaintiff's Motion in Limine related to calling certain witnesses live (Doc. #52) was resolved by agreement of the parties, and is moot.
- 5) Defendant's Combined Motions in Limine (Doc. #56) are denied in part and granted in part. The Court's rulings are briefly summarized as follows:
 - A) "Stray remarks" will be admitted to the extent Plaintiff establishes a foundation showing relevance to Defendant's conduct alleged herein. Defendant will renew its motion in limine with regard to stray remarks allegedly made by Graessle, supported by references to the transcript of his deposition.
 - B) Evidence of a pattern of discrimination or "me too" evidence will be admitted only to the extent Plaintiff first establishes the context of any such evidence, and provides a foundation proving that the probative value of such evidence outweighs the prejudice to Defendant. Plaintiff will submit the names and proposed testimony of each witness it anticipates calling to testify in this regard by Tuesday, September 23; Defendant will respond by Thursday, September 25.
 - C) Thermo's position statement to the EEOC will be admitted.
 - D) Conclusory references to witnesses lying or committing perjury will not be permitted during trial, with the exception of closing arguments.
 - E) Witnesses may not be asked to provide conclusory opinion testimony or legal opinions with regard to discrimination or retaliation.
 - F) Plaintiff may testify regarding his alleged damages, to the extent he testifies on the basis of personal knowledge, and within the bounds of lay testimony.
 - G) Plaintiff may present evidence of his performance as an employee of Thermo prior to 2004, to the extent such performance has later relevance to his termination.

The remaining issues raised in Defendant's Combined Motion in Limine were resolved by agreement of the parties or by the Court as stated on the record during the pretrial conference.

- 6) The Court will rule on the parties' proposed case-specific jury instructions, and objections thereto, before instructing the jury. The Court has taken under advisement Defendant's Motion for Leave to File Jury Interrogatories (Doc. #72).

IT IS SO ORDERED.

9-22-2008
DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE